

ARGUMENTS/REMARKS

Applicants would like to thank the examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office action, and amended as necessary to more clearly and particularly describe and claim the subject matter which applicants regard as the invention.

Claims 2, 4, 6-9, and 16-35 remain in this application. Claims 1, 3, 5, and 10-15 have been canceled. The Examiner stated that claim 27 would be allowable if put into independent format, and that claim 28 is allowed.

Claims 2, 4, 6-9, and 16-36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Gisby (U.S. 5,943,416) in view of Peters *et al.* (U.S. 5,893,098) and in further view of Jolissaint (U.S. 5,740,240). For the following reasons, the rejection is respectfully traversed.

The claims all recite, using language of various breadth, the basic feature that, upon request of the survey participant, an automated *survey* can be transferred back to an agent to proceed with the *same survey* via a manual process. See claims 16 (step VI), 26 (step iii), 30 (line 35), and 36 (lines 31-40). None of the references teach any such capability.

The Examiner basically admits that such a feature is not taught by Gisby or Peters, and instead cites Jolissaint for such a teaching (see page 9 of the Office action). However, the Examiner is incorrect in her interpretation of the reference. Nowhere does Jolissaint suggest that any survey is conducted; neither an automated nor a manual survey is discussed. Instead, Jolissaint merely discusses an automated *call response* system, such as that a bank might use for providing account information to customers (see col. 4, lines 64-65). Jolissaint make clear that all the VRU system does is transfer a call along with caller information to an agent if the caller requests such a transfer (see col. 5, lines 24-43). In fact, the reference clearly states that after the transfer, the VRU hangs up (lines 34-35), and then the agent and the caller interact *via voice* communications (col. 5, lines 42-43). Nowhere does the reference suggest that the agent able to continue with the *same survey* that was being originally conducted via an automated system.

Accordingly, the Jolissaint reference does not teach the features missing from the Gisby and Peters references, and thus the rejection for obviousness cannot stand

and must be withdrawn. Thus, the claims are patentable over the combination of references.

Furthermore, the Examiner argues that “notice” was taken by the Examiner in a previous office action that collecting and presenting survey information within 24 hours of completing conducting the survey, and that this was “admitted” by applicant for not being contested per MPEP 2144.03(c). Applicant disputes that conclusion. The cited section of the MPEP has to do with the Examiner taking “official notice” of a fact. The Examiner never took “official notice” of any facts, but instead merely argued that some fact was “old” and “well known”. Such an argument is not sufficient, as taking “official notice” requires that the Examiner adequately notify the applicant of that intent, and the failure of the Examiner to state that she was taking “official notice” is fatal to her assertion of any admission by applicant.

Accordingly, applicant disputes the factual assertion. Taking “official notice” requires that facts outside of the record be capable of instant and unquestionable demonstration as being ‘well-known’ in the art (see MPEP §2144.03). However, the Examiner has apparently attempted, but failed, to find a reference which teaches providing the results of a survey within 24 hours of collecting the survey data. Hence, these elements are not likely to be “notoriously well known” as required (*id.*). Accordingly, applicant hereby traverses the official notice and formally requests, as required by the MPEP (*id.*), that the Examiner locate a reference in support of her position that it is well-known in the art of automated survey systems to provide results within 24 hours, as asserted by the Examiner in the Office action.

Consequently, applicant asserts that the Examiner’s rejections based on the Official notice that is herein traversed, be withdrawn absent the Examiner finding a reference supporting the notoriously “well known” nature of the claimed feature.

In consideration of the foregoing analysis, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. QUAL-32669.

Respectfully submitted,
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